

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date:

Key District Office: Brooklyn

EIN: [REDACTED]

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Dear Applicant:

This is in reply to your application for recognition of exemption under section 501(c)(6) of the Internal Revenue Code.

We have reviewed the information you have submitted and have concluded that you do not qualify for recognition of exemption under section 501(c)(6) of the Code.

You are an association of manufacturers of computers and related technology. Your founders were [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED].

Your purpose is to promote the development and use of standardized computer specifications for the design of computer hardware and software so that computer users may use their applications software on a greater range of computer hardware systems. You state that you will standardize the computer specifications that define the points at which the operating system and the applications software interact with the computer hardware. You call the standardized specifications the [REDACTED].

You state that you are designing [REDACTED] to function with the [REDACTED] architecture. You selected the [REDACTED] architecture because it employs fewer commands than other available architectures thereby allowing it to operate at greater speeds. You also note that [REDACTED] will not be limited to any particular manufacturer of computer hardware or to any particular developer of software.

In addition to promoting and developing [REDACTED], you will also manage a lab to perform the certification tests on the hardware and software, or oversee the certification tests performed at an outside lab to ensure that hardware and software developed by any company are [REDACTED]-compliant. You anticipate receipts of \$ [REDACTED] in the first year that the testing program is conducted. About

██████████

██████% of your activities will be devoted to the certification process.

In your application, you state that ██████ is used in conjunction with computer hardware that incorporates the ██████ computer chip. The ██████ chip is a new chip being developed by a joint venture known as ██████, which was formed by ██████, ██████, and ██████. You state that the ██████ chip will allow a computer to perform processes simultaneously. The chip will be used by many manufacturers of computer hardware. You state that you will not promote the use of the ██████ computer chip, nor will the certification process test whether the ██████ chip is used by any hardware manufacturer that asks you to conduct tests on its products.

You also plan to publish a manual setting forth the ██████ specifications that will be available to the public for a nominal fee. You will also have an electronic bulletin board and technicians to answer questions from callers who are designing ██████-compliant hardware and software. Finally, you state that you will offer classes on writing ██████-compliant programs. You state that these services will be offered for a nominal fee.

You have three classes of members: sponsor members; principal members; and associate members. You currently have five sponsor members: ██████; ██████; ██████; ██████; and ██████. The annual dues for sponsor members are \$██████. However, to become a sponsor member, the organization must provide an amount not less than \$██████ as an initial commitment, with such commitment representing an initiation fee plus the first year's annual dues. Your by-laws provide that each sponsor member is entitled to appoint one director to your board of directors. In addition, the sponsor member may appoint a representative to your operating committee, technical steering committee, and to each of your working groups. They also receive early access to your licensed programming code. In your articles of incorporation you state that if at any time the number of sponsor members entitled to elect a director falls below three, the association shall be dissolved.

You have two principal members: ██████ and ██████. Principal members elect the at-large directors of the board of directors, and at least one and as many as four representatives to serve on the operating committee and each working group.

You have about ██████ associate members. By invitation, associate members may participate in the technical steering committee or a working group.

[REDACTED]

All classes of members are entitled to receive your publications; license programming code developed as a result of your testing of computer hardware and software; and all meetings of the general membership.

Your proposed budget and other financial information establish that development, promotion and compliance testing are your primary activities.

Section 501(c)(6) of the Code exempts from federal income tax business leagues, chambers of commerce, real estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations defines a business league as an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed towards the improvement of business conditions in one or more lines of business as distinguished from the performance of particular services for individual persons.

In National Muffler Dealers Ass'n, Inc. v. U.S., 440 U.S. 472 (1979), the United States Supreme Court held that a trade organization for muffler dealers, which confined its membership to dealers franchised by a particular company and its activities to the business of that company, does not qualify for exemption because the association is not engaged in the improvement of business conditions of a line of business. The Court further concluded that exemption under section 501(c)(6) is not available to aid one group in competition with another within an industry.

In National Prime Users Group, Inc. v. U.S., 60 AFTR 2d 87-5564 (D.C. Md 1987), the Court held that an organization which serves the needs of users of a specific brand of computer promotes only a segment of a line of business and is not exempt.

In Guide International Corp. v. U.S., No. 89 TC 2345 (May 8, 1990), the court concluded that an association of computer users did not qualify for exemption under section 501(c)(6) of the Code because it benefited essentially users of IBM equipment.

Rev. Rul. 68-264, 1968-1 C.B. 264, defines a particular service for the purposes of section 501(c)(6) of the Code as an

[REDACTED]

activity that serves as a convenience or an economy to the members of the organization in the operation of their own businesses.

Rev. Rul. 70-187, 1970-1 C.B. 131, holds that a nonprofit organization formed by manufacturers of a particular product to conduct a program of testing and certification of the product to establish acceptable standards within the industry as a whole qualifies for exemption under section 501(c)(6) of the Code. Approximately 90 percent of the manufacturers in the industry participated in the program. The described organization was held to be exempt as a self-regulatory measure to prevent trade abuses in the industry.

Rev. Rul. 74-147, 1974-1 C.B. 136, holds that an organization whose members represent diversified businesses that own, rent, or lease digital computers produced by various manufacturers, and which is organized to improve the efficiency of its members' use of computers qualifies for exemption under section 501(c)(6) of the Code. The primary objective of the organization was to provide a forum for the exchange of information which will lead to the more efficient utilization of computers by its members and other interested users.

Rev. Rul. 83-164, 1983-2 C.B. 95, provides that an organization whose members represent diversified businesses that own, rent, or lease computers produced by a single computer manufacturer does not qualify for exemption from federal income tax as a business league under section 501(c)(6) of the Code.

Although standardization has been traditionally recognized as an exempt section 501(c)(6) purpose. However, as indicated in Rev. Rul. 70-187, the reason that a standard setting organization is exempt is that it operates as a self-regulatory measure to prevent trade abuses in the industry.

The information submitted does not indicate that you are operated as a self-regulatory measure to prevent trade abuses in the industry. Instead, you appear to be operated to research, develop and promote the [REDACTED] architecture.

Furthermore, the information submitted establishes that you are primarily interested in establishing and improving the position in the market place that [REDACTED] architecture currently has. This architecture system is in competition with other

systems. It does not matter that your members are in competition with each other for a share of the market and that this is an open system. The key consideration is whether your activities give a competitive edge to your special architecture as opposed to another. [REDACTED] architecture is the equivalent of a brand name. Therefore, we have concluded that you do not qualify for exemption under section 501(c)(6) of the Code because you are not acting on behalf of a recognizable line of business. This is in keeping with the holdings in the above cited court cases and Rev. Rul. 83-164.

As indicated above, because you are promoting the equivalent of a brand name, the holding in Rev. Rul. 74-147 is not applicable. The organization described in that revenue ruling was an educational organization and its actions did not provide a competitive advantage to one group of users.

In addition, by establishing a system whereby your members and others can have their product certified as meeting certain recognizable standards, you are providing a particular service to them. You have established a vehicle which relieves them of the problems encountered in testing a program or a piece of hardware for compatibility with a system. This is an economy or a convenience to them. See Rev. Rul. 68-147.

Based on the foregoing, you do not qualify for exemption from federal income tax as an organization described in section 501(c)(6) of the Code. Accordingly, you are required to file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days from today, in duplicate, and must be signed by one of your principal officers. When sending a protest or other correspondence with respect to this case, you will expedite its receipt by placing the following symbols on the envelope: [REDACTED]. These symbols do not refer to your case, but rather to its location.

You also have the right to a conference in this office after your protest statement is submitted. If you desire a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your principal officers, that person must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

[REDACTED]

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to the key District Director, Brooklyn, which is your key district for exempt organization matters. Thereafter, any questions about your federal income tax status should be addressed to your key District Director.

Sincerely yours,

[REDACTED]

[REDACTED]
Chief, Exempt Organizations
Rulings Branch 4

cc: DD, Brooklyn
Attn: EO Group

cc: [REDACTED]

cc: State officials of [REDACTED]